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**Noel Canning, a division of the Noel Corporation and Teamsters Local 760.** Case 19–CA–032872

December 16, 2014

**DECISION AND ORDER**

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON  
AND SCHIFFER

On February 8, 2012, the Board issued a Decision and Order in this proceeding, which is reported at 358 NLRB No. 4. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a cross-application for enforcement.

On January 25, 2013, the court granted the Respondent's petition and vacated the Board's Order. *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013). At the time of the Board's Order, the Board included three persons whose January 2012 appointments to the Board had been challenged as constitutionally infirm. The court's decision was based on its conclusion that the January 2012 appointments were invalid, and that the Board therefore lacked a quorum to act at the time that it issued its Order. *Id.* at 508.<sup>1</sup> The Board subsequently filed a petition for certiorari. Thereafter, the Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), which held the January 2012 appointments invalid, affirming the court of appeals' judgment on modified grounds.

By letter dated August 15, 2014, the Executive Secretary notified the parties that, in view of the determination that the Board that had previously decided the case was not properly constituted, the Board would now "consider the case anew and . . . issue a decision and order resolving the complaint allegations."<sup>2</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, *supra*, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated

Decision and Order, and we agree with the rationale set forth therein. Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt the judge's recommended Order, to the extent and for the reasons stated in the Decision and Order reported at 358 NLRB No. 4, which is incorporated herein by reference.<sup>3</sup> The judge's recommended Order, as further modified herein, is set forth in full below.

**ORDER**

The Respondent, Noel Canning, a division of the Noel Corporation, Yakima, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the Union in good faith by refusing to reduce to writing and to execute a collective-bargaining agreement reached with the Union, Teamsters Local 760, embodying the terms agreed to on December 8, 2010, and ratified by the employees on December 15, 2010, including payment of a retroactive bonus, thereby repudiating the parties' agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute a collective-bargaining agreement embodying the terms reached with the Union on December 8, 2010, and ratified by the employees on December 15, 2010, for all employees in the following appropriate bargaining unit:

All production employees, including lead production, dock/warehouse employees, including lead dock/warehouse, quality control mixer, maintenance employees, mechanics, construction worker employees, utility employees; excluding all other employees, guards, office clerical employees, owners and supervisors as defined in the Act.

(b) Give retroactive effect, to October 1, 2010, to the provisions of the collective-bargaining agreement reached with the Union on December 8, 2010, and ratified by the employees on December 15, 2010, and apply the terms of that agreement for the agreed-upon 2-year duration, through September 30, 2012.

<sup>1</sup> The court's decision was not based on the merits of the unfair labor practice case; to the contrary, the court found that substantial evidence supported the recess-Board's Decision and Order. 705 F.3d at 494, 496.

<sup>2</sup> On September 5, 2014, the Respondent filed a motion to submit additional written argument. On September 10, 2014, the Executive Secretary denied that motion, but allowed the Respondent an opportunity to submit a "Reliant letter." See *Reliant Energy*, 339 NLRB 66 (2003). The Respondent has not done so.

<sup>3</sup> We shall also modify the judge's recommended Order and substitute a new notice in accordance with our recent decision in *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014). We shall further modify the notice in accordance with *Durham School Services*, 360 NLRB No. 85 (2014).

(c) Make all affected unit employees and the union pension trust whole, with interest, for any loss of wages or retroactive pension amounts.

(d) Make all affected unit employees whole, with interest, for the retroactive bonus (made to compensate employees for the length of time it took to get a contract) agreed upon by the Respondent and the Union on December 8, 2010.

(e) Compensate all affected unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amounts due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility and place of business in Yakima, Washington, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 8, 2010.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the

Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 16, 2014

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Mark Gaston Pearce, Chairman

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Harry I. Johnson, III, Member

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Nancy Schiffer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

#### NOTICE TO EMPLOYEES

#### POSTED BY ORDER OF THE

#### NATIONAL LABOR RELATIONS BOARD

#### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with the Union in good faith by not reducing to writing and signing a collective-bargaining agreement reached with the Union, embodying the terms agreed to on December 8, 2010, and ratified by employees on December 15, 2010, including payment of a retroactive bonus, thereby repudiating the agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL execute a collective-bargaining agreement embodying the terms reached with the Union on December 8, 2010, and ratified by employees on December 15, 2010, for all employees in the following appropriate bargaining unit:

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

All production employees, including lead production, dock/warehouse employees, including lead dock/warehouse, quality control mixer, maintenance employees, mechanics, construction worker employees, utility employees; excluding all other employees, guards, office clerical employees, owners and supervisors as defined in the Act.

WE WILL give retroactive effect, to October 1, 2010, to the collective-bargaining agreement, and apply the terms of that agreement for the agreed-upon 2-year duration, through September 30, 2012.

WE WILL make our unit employees and the Union pension trust whole, with interest, for any loss of wages or retroactive pension amounts.

WE WILL make our unit employees whole, with interest, for the retroactive bonus.

WE WILL compensate bargaining unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

NOEL CANNING, A DIVISION OF THE NOEL CORPORATION

The Board's decision can be found at [www.nlrb.gov/case/19-CA-032872](http://www.nlrb.gov/case/19-CA-032872) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

